IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 2279 of 2005

Between:

K. Sanjay Srinivas, s/o Kondas,
Akshaya Plaza, F.7, 55, Harries Road, Egmore, Chennai.

..... PETITIONER

AND

1 The Station House Officer, IV Town Police Station, Visakhapatnam
2 The Government of Andhra Pradesh, rep. by its Secretary, Home Department, Secretariat Building, Hyderabad.
3 M/s Crystal Dot Scan, a Partnership firm having igts office at D.No. 50-B1-4, 1st Floor, Rajendranagar, Seethammapet, Visakhapatnam - 530 016, Rep. by its Power of Attorney Holder and Manager Sri Veeramachaneni Sudhakar s/o Hanumantha Rao, Hindu, age 28,R/o Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the F.I.R. in Cr.No. 139 of 2004 dated 5-6-2004 of IV Town Police Station, Visakhapatnam is illegal, arbitrary and contrary to principles laid down by the Hon'ble Supreme Court, and consequently direct respondents not to take any action thereon, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.M.S.RAMCHANDRA RAO

Counsel for the Respondent No.: GP FOR HOME

The Court at the admission stage made the following :

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ORDER:.

The learned counsel appearing for the petitioner submits that on the basis of averments made in the complaint, no offence can be made out against the petitioner under Section 420 r/w Section 34 IPC. He states that the respondent has placed the order for supplying the machinery and the same was supplied. However, the machine has not functioned due to certain technical defects and that every effort is being made to rectify the defect. Therefore, it cannot be said that the petitioner has intentionally cheated the complainant by not supplying proper machinery or he had induced the complainant to part with huge sums on the false assurances of supplying the machine of the choice of the complainant. He also submits that at the most, the allegations made against the petitioner would amount to civil breach of trust and the element of cheating is not made out in the complaint since there was no intention in the mind of the petitioner to cheat the complainant by not supplying the correct machinery.

It is very difficult now to arrive at a conclusion, as to whether the alleged transaction falls within the parameters of Section 420 IPC. Even assuming that all the facts are admitted, if they do not constitute an offence, then this court cannot quash or set aside the FIR. In the present case, since allegations and counter allegations are made, this court cannot go into the correctness or otherwise of the same, which can be decided only after a full-fledged trial. Therefore, the best course

is to allow the investigation to go on.

There are no merits in the Writ Petition and accordingly, the same is dismissed. No costs.

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D.S.R. VARMA, J

DATED: 04.03.2005

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To

1 The Station House Officer, IV Town Police Station, Visakhapatnam
2 The Government of Andhra Pradesh, rep. by its Secretary, Home Department, Secretariat Building, Hyderabad.
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4. 2 CCs to G.P. for Home, High Court of A.P., Hyderabad. (OUT)

5. 2 CD Copies.